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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13
14 **MICHAEL V. NICKERSON,**

15 Plaintiff,

16 v.

17 **RON BROOMFIELD, et al.,**

18 Defendants.
19

5:20-cv-06326-EJD (PR)

**DEFENDANTS' WAIVER OF REPLY
AND DEMAND FOR JURY TRIAL**

Judge: The Honorable Edward J. Davila
Trial Date: Not Set
Action Filed: September 9, 2020

20 TO PLAINTIFF MICHAEL V. NICKERSON, PRO SE:

21 PLEASE TAKE NOTICE that Defendants Allison, Broomfield, and Clark waive their right
22 to reply to the complaint under 42 U.S.C. § 1997e(g). Additionally, Defendants demand a trial by
23 jury in this action.

24 **I. BACKGROUND.**

25 Plaintiff Michael V. Nickerson (F77522) is a state-prison inmate currently incarcerated at
26 San Quentin State Prison, in San Quentin, California. (ECF No. 1.) Nickerson filed the instant
27 action on September 9, 2020. (*Id.*) On February 11, 2021, the Court dismissed Nickerson's
28 complaint with leave to amend because it failed to state a claim. (ECF No. 7.) Nickerson filed an

1 amended complaint on March 12, 2021. (ECF No. 9.) The Court screened Nickerson's Amended
 2 Complaint on August 10, 2021, and found that, liberally construed, Nickerson's complaint stated
 3 an Eighth Amendment deliberate indifference claim against Defendants for unsafe conditions at
 4 San Quentin. (ECF No. 10 at 3.) Defendants intend to file a dispositive motion.

5 **II. DEFENDANTS WAIVE THEIR RIGHT TO REPLY TO THE COMPLAINT.**

6 Under 42 U.S.C. § 1997e(g), "[a]ny defendant may waive the right to reply to any action
 7 brought by a prisoner confined in any jail, prison, or other correctional facility under . . . Federal
 8 law." Further, "[n]otwithstanding any other law or rule of procedure, such a waiver shall not
 9 constitute an admission of the allegations contained in the complaint. No relief shall be granted
 10 to the plaintiff unless a reply has been filed." 42 U.S.C. § 1997e(g). However, "the court may
 11 require any defendant to reply to a complaint brought under this section if it finds that the plaintiff
 12 has a reasonable opportunity to prevail on the merits." 42 U.S.C. § 1997e(g)(2). To date, the
 13 Court has not made such a finding.

14 **III. DEFENDANTS DEMAND A TRIAL BY JURY.**

15 Under Federal Rule of Civil Procedure 38(b) and Civil Local Rule 3-6, Defendants demand
 16 a trial by jury in this action.

17 Dated: December 9, 2021

Respectfully Submitted,

18 ROB BONTA
 19 Attorney General of California
 20 JEFFREY T. FISHER
 Supervising Deputy Attorney General

21
 22 /s/ Zewugeberhan Desta
 23 ZEWUGEBERHAN DESTA
 24 Deputy Attorney General
 Attorneys for Defendants

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CERTIFICATE OF SERVICE

Case Name: **M. Nickerson (F77522) v.
Broomfield, et al.**

No. **5:20-cv-06326-EJD (PR)**

I hereby certify that on December 9, 2021, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANTS' WAIVER OF REPLY AND DEMAND FOR JURY TRIAL

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On December 9, 2021, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Michael Vaugh Nickerson CDCR# F-77522
1 Main Street
San Quentin State Prison
San Quentin, CA 94964
In Pro Per

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 9, 2021, at Los Angeles, California.

D. Beltoya
Declarant

/s/ D. Beltoya
Signature